IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

FAO.No. 242 of 2006()

AGAINST THE ORDER DATED 07/07/2004 IN IA 1390/02 IN OS.234/2002 of SUB COURT,KOTTARAKKARA

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APPELLANTS: (PETITIONERS/PLAINTIFFS):

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1. MEENAKSHI AMMA NIRMALA DEVI,
W/O. K.NARAYANA PILLAI, EASWARA VILASOM,
KIZHAKKEKARA, KOTTARAKARA.

2. NARAYANA PILLAI AJITH,
S/O. K.NARAYANA PILLAI -DO- -DO-.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: (COUNTER PETITIONERS/DEFENDANTS):

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1. EASWARA PILLAI RAJENDRAN NAIR @
RAJENDRAN, S/O. EASWARA PILLAI, KIZHAKKEKARA,
KOTTARAKARA.

2. EASWARA PILLAI CHANDRASEKHARAN NAIR,
S/O. EASWARA PILLAI, PANDIT'S COLONY, KOWDIAR,
TRIVANDRUM.

3. CHANDRASEKHARAN NAIR JAYACHANDRAN,
S/O. E.CHANDRASEKHARAN NAIR, PANDIT'S COLONY,
KOWDIAR, TRIVANDRUM.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 242 OF 2006

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Dated this the 30th day of November, 2007

J U D G M E N T

Petitioners in I.A. No.1390 of 2002 in O.S. No.234 of 2002 on the file of the Sub Court, Kottarakkara are the appellants. Appeal is filed against the order passed by the court below dismissing the aforesaid petition for a declaration that the first defendant is not competent to continue as the Managing Trustee of the Trust and for other reliefs. In the suit, plaintiffs filed the petition under Order XL Rule 1 of the Code of Civil Procedure to appoint a Receiver to take possession of the plaint schedule properties for the proper administration of the same and to remit the income in the court and to maintain the proper account showing the income and expenditure. In the petition for appointment of Receiver it was averred that first defendant is the Managing Trustee of the School. There are three other Trustees who have equal rights in the management of the Trust properties. It was averred that the first defendant was conducting the School in violation of the

provisions contained in the Trust deed. It was averred that he is appointing teaching and non-teaching staff in violation of the provisions of the Trust deed. So the plaintiffs filed the petition to appoint a Receiver.

2. First defendant filed a counter affidavit contending that he assumed the office of the Managing Trustee on 4.7.1979 and he is acting strictly in accordance with the conditions in the Trust deed and also in consultation with the plaintiffs and other Trustees. According to the defendant there are only three Trustees and five beneficiaries as per the Trust deed. It was contended that the management and administration of the School is done strictly in accordance with the provisions of the Kerala Education Act and Rules. Hence the first defendant prayed for the dismissal of the petition.

3. The court below found that as per clause 13 of the Trust deed to change the Managing Trustee, unanimous decision of all the Trustees is necessary. It is also held that in view of the provisions contained in Section 33 of the Kerala Education Act, the suit itself is barred and there is no

provision in the Trustee deed for appointing a Receiver. Challenging that order, this appeal is filed.

4. Learned counsel appearing for the appellants argued that the court below failed to understand the scope of the suit. It is argued that it is not necessary for all the Trustees to approach the court and even one Trustee can approach the court and convince the court that the Managing Trustee is acting against the interest of the Trust and the court is bound to consider the same and grant appropriate reliefs, taking into account all the aspects. It is argued that if the reasoning of the court below is accepted, no decision can be taken for the removal, etc., of the Trustees including Managing Trustee. It is also argued that there is no bar under Section 33 of the Kerala Education Act for removal of a Trustee and what is provided in Section 33 of the Kerala Education Act is that the civil court shall not pass any injunction against the Manager. Section 33 of the Act reads as follows:

> **"33. Courts not to grant injunction.- Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time**

> being in force, no court shall grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under this Act".

5. Of course, if a Manager wants to appoint teaching or non-teaching staff, or if he takes steps to admit students, the court cannot grant a temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act. The court below has not considered whether the provisions of Section 33 of the Kerala Education Act is a bar to modify the provisions of a private Trust. Court below has failed to note that the relief of removal of a Managing Trustee is not a matter covered by the Act or Rules. Such relief can be granted only by a civil court. The observation made by the court below that unless all the Trustees decides unanimously, the Managing Trustee cannot be removed at all does not appears to be correct. Managing Trustee is also a Trustee. No one can expect him to take a decision to remove himself from the post of Managing Trustee. So that is a matter which a civil court can consider. The view taken by learned Sub Judge that the suit is bad in

view of the provisions contained in Section 33 of the Act is also unsustainable. But considering the fact that the suit is of the year 2002 and so far no Receiver is appointed, I am of the view that instead of remanding the Receiver application for fresh disposal on merits, a direction can be given to the learned Sub Judge to dispose of the suit itself within a time frame.

In the result, the appeal is allowed. The order passed by the court below in I.A. No.1390 of 2002 is set aside. There will be a direction to the court below to try and dispose the suit as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment, untrammelled by any of the observations contained in the impugned order.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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F.A.O. NO. 242 OF 2006

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J U D G M E N T

30TH NOVEMBER, 2007